



STIPULATED REMEDIATION GRANT GUIDELINES

Introduction

The Indiana Brownfields Program (“Program”) offers Stipulated Remediation Grants (“Remediation Grants”) to qualifying Indiana political subdivisions (as defined by Indiana Code (“IC”) 13-11-2-164(c)) (“Applicants”). Examples of political subdivisions that have qualified as Applicants for Program financial assistance in the past can be found on the Program’s web site at <http://www.in.gov/ifa/brownfields/2366.htm>. Each Remediation Grant awarded will stipulate that the Applicant satisfy the requirements set forth in these guidelines to avoid being required to repay its Remediation Grant and accrued interest over a five-year period.

An Applicant may apply to the Program for a Remediation Grant to finance environmental remediation costs at an identified brownfield within its jurisdiction. Not-for-profit or for-profit corporations may be co-applicants, but will not directly receive funding from the Program as all awards are made only to the political subdivision involved in a project. Remediation Grants may not be used to remediate sites contaminated solely by petroleum, although sites contaminated by both hazardous substances and petroleum may be eligible.¹

The maximum Remediation Grant (or sum of multiple Remediation Grant awards) is \$400,000 per Applicant, per round. Three million dollars will be made available in State Fiscal Year 2009 for Remediation Grants and will be awarded in two funding rounds (\$1,500,000 available per round). Terms and conditions, if any, of a Remediation Grant award will be detailed in an Applicant’s award letter, including conditions related to and a date after which the Remediation Grant will expire (generally, one (1) year after execution of a financial assistance agreement (“Agreement”) if no eligible costs have been incurred for Program-approved activities on the brownfield and no invoice(s) submitted to the Program for reimbursement from the grant). Remediation Grant recipients will be required to execute an Agreement with the Indiana Finance Authority (“Authority”), the Indiana State Budget Agency, and the consultant/contractor selected to perform the remediation work.

Application deadlines will be posted on the Program’s web site at <http://www.brownfields.in.gov>. No application information or supporting documentation (e.g., site access agreement) will be accepted for review by the Program after the posted deadline for the grant round. The Program reserves the right to reject an Applicant’s application and withdraw it from funding consideration for failing to satisfy one of the threshold eligibility criteria outlined below or to submit the application by 5:00 pm on the application deadline.

¹ For a site contaminated with both hazardous substances and petroleum to be eligible for a Remediation Grant, the site contamination driving the remediation must be the hazardous substances contamination, with petroleum being considered to be a secondary issue or not to be the primary contaminant of concern. In other words, a Remediation Grant will not be awarded for a former gas station site that also happens to have an asbestos abatement issue. Petroleum Remediation Grant funding is available from the Indiana Brownfields Program for assessment and remediation of petroleum-contaminated brownfields. Please visit <http://www.in.gov/ifa/brownfields/2366.htm> for more information.

Threshold Eligibility Criteria

This section contains the threshold criteria that ensure Applicants and sites are eligible for Remediation Grant funding. Threshold eligibility criteria are pass/fail. Only those applications that pass all the threshold criteria will be scored and ranked based on the ranking criteria contained in these guidelines.

To be eligible for Remediation Grant funding, Applicants must be able to demonstrate that the Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) is not a liable party under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, (“CERCLA”) or Indiana’s Hazardous Substance Response Trust Fund law, IC 13-25-4. Under CERCLA § 107 and IC 13-25-4-8, current owners and operators of a facility, owners and operators of a facility at the time of disposal of a hazardous substance, parties that arranged for the treatment or disposal of hazardous substances, and parties that accepted hazardous substances for transport to disposal or treatment facilities are potentially liable for cleanup or paying the cost of cleaning up a site. Thus, an owner of contaminated land may be liable under CERCLA § 107 or IC 13-25-4 even though he/she did not cause or contribute to the contamination at the site.

Applicants, or any other entities involved in the project, that are eligible, or that seek to become eligible, to receive a Remediation Grant based on an exemption from CERCLA liability as a: (1) bona fide prospective purchaser (“BFPP”), (2) contiguous property owner (“CPO”), or (3) innocent landowner (“ILO”) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible Applicant. These include, but are not limited to the following:

- a. All Remediation Grant Applicants (or entities involved in the project) asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “all appropriate inquiry,” as found in section 101(35)(B) of CERCLA, **on or before the date of their acquisition** of the property.
- b. Applicants seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be:
 - a. potentially liable, or affiliated with any other person that is potentially liable, for response costs at the facility through (a) any direct or indirect familial relationship; or (b) any contractual, corporate, or financial relationships; or
 - b. a reorganized business entity that was potentially liable or
 - c. otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
- c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - a. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - b. taking reasonable steps with respect to hazardous substance releases;
 - c. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - d. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

- e. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) (*see* CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B)).

In order to demonstrate the landowner liability protections or any other potentially applicable liability exemption (i.e., involuntary acquisition by a political subdivision), please provide written answers to the questions found in Attachment A and submit them as a part of the supplemental information to your application.

Furthermore, if an Applicant intends to re-grant or loan a Remediation Grant to a third party, the Applicant must ensure that a borrower or sub-grant recipient is not potentially liable under CERCLA or IC 13-25-4. An Applicant may rely on its own investigation into the potential liability of its borrower or sub-grant recipient, which can include a written opinion from the borrower's or sub-grant recipient's counsel. However, the Applicant must advise the borrower or sub-grant recipient that the investigation and/or opinion of the borrower's or sub-grant recipient's counsel is not binding on the Program, the Authority, the Indiana Department of Environmental Management ("IDEM"), or the State. As part of its due diligence, however, the Program will request the information regarding potential liability of a sub-borrower or sub-grant recipient received by the Applicant in its investigation. If the Applicant or any other entity involved in redeveloping the Site is adjudged, by final, non-appealable order within 10 years of the date of the Agreement, to be a party responsible for the contamination being remediated with grant funds, the Applicant shall forfeit any right to additional disbursements and will be obligated to repay to the Authority previously disbursed grant funds in accordance with the terms of its Agreement.

At the discretion of the Program, for Remediation Grant purposes only, and based on the rank of the project and available funds, an Applicant (or any entity involved in the project) that satisfies the criteria to qualify as a BFPP but for having purchased the Site that is the subject of the Remediation Grant prior to January 11, 2002, may claim BFPP status so long as the Applicant (or other entity involved in the project) can satisfy all the other BFPP requirements listed below:

- All disposal of hazardous substances at the Site occurred before the person acquired the Site.
- The owner must not be liable in any way for contamination at the Site or affiliated with a responsible party. Affiliations include familial, contractual, or corporate relationships that are the result of a reorganization of a business entity with potential liability.
- The owner must have made all appropriate inquiries (AAI) in to the prior ownership and uses of the site prior to purchase. AAI, typically met with an ASTM-based Phase I environmental assessment, cannot be more than one year old at time of purchase and must be updated, prior to purchase, if it is more than six months old at time of purchase. Please see EPA's AAI Final Rule (70 FR 66070) (<http://www.epa.gov/brownfields/regneg.htm>).
- The owner must take appropriate care (reasonable steps) regarding any hazardous substances found at the Site, including preventing future releases and exposures to hazardous substances on the Site.
- The owner must provide all legally required notices and cooperate with authorized response persons in the event of a discovery or release of any hazardous substances at the Site.
- The owner must comply with any land-use restrictions associated with response actions at the Site.

In addition to the above, Applicants must also demonstrate the following *at the time an application is submitted*:

1. The property meets the definition of a brownfield.²
2. The Applicant meets the definition of political subdivision (as defined by IC 13-11-2-164(c)).
3. The Applicant has completed, or has caused to be completed, a written American Society for Testing and Materials (“ASTM”) Phase I (E 1527-05) report prepared in compliance with the All Appropriate Inquiries Final Rule (70 FR 66070).
(see <http://www.epa.gov/brownfields/regneg.htm>)
4. The Applicant has completed, or has caused to be completed, a Phase II Environmental Site Assessment and has data of sufficient quantity and quality to support the planned remedial activities.
5. If the Applicant intends to apply for Remediation Grant funding to perform asbestos abatement activities, it has submitted its “IDEM Notification of Demolition and Renovation Operations” (State Form 44593 (R2/8-99) to IDEM’s Office of Air Quality (“OAQ”) for review and has received acknowledgment (notice confirming its receipt) from IDEM OAQ. The “IDEM Notification of Demolition and Renovation Operations” requires a start date be included on the form; this date should be no earlier than five (5) months from the date of application submittal in order to allow for the Remediation Grant administrative process to run its course, should a Remediation Grant be awarded.
6. The Applicant verifies that adequate funding is available and committed to complete the remedial activities if the estimated cost of remediation exceeds the maximum Remediation Grant amount.
7. The Applicant will address any contamination not covered by a Remediation Grant.
8. The current owner of the brownfield, if not the Applicant, has provided written consent to the Applicant for site access to perform the Remediation Grant-funded activities. Access to the brownfield must be given to the State, any consultant(s), the Applicant, and any of their respective representatives or agents for the duration of the grant performance period (two (2) years from the execution date of the Agreement).

The following items are also threshold eligibility criteria and may disqualify an application from consideration for Remediation Grant funding:

1. The site is subject to an open or pending state or federal enforcement action.
2. The site is under Resource Conservation and Recovery Act Corrective Action.
3. The site presents an imminent threat to human health or the environment.

Note: For purposes of threshold eligibility review, the Program, if necessary, may seek clarification of applicant information and/or consider information from other sources, including IDEM, the Authority, or United State Environmental Protection Agency (“EPA”) files. In addition, a determination of eligibility to receive brownfields grant assistance from the Authority under these guidelines does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit state or EPA enforcement authorities against any party.

² A threshold issue evaluated by the Program in reviewing applications is whether the property on which grant funding is sought to be spent meets the definition of a brownfield, which is a parcel of real estate that is abandoned or inactive; or may not be operated at its appropriate use; and on which expansion or redevelopment is complicated because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment. IC 13-11-2-19.3.

Eligible Uses of Grant Funds; Disbursement Procedures

Remediation Grant funding can be used for costs associated with eligible and approved cleanup activities (“Approved Remediation Costs”). Funding may also be used for certain other costs incurred in conjunction with Approved Remediation Costs as approved by the Program. Costs eligible for Remediation Grant funding include:

- Remediation Work Plan development
- Soil and/or groundwater remediation activities
- Asbestos and/or lead paint abatement (only if performed in conjunction with Program-approved remediation activities)

Remediation activities conducted with Remediation Grants must be performed consistent with the IDEM Risk Integrated System of Closure (“RISC”) guidelines in effect at the time the Program approves the proposed grant activities. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on detailed site data and proposed site end use to determine the appropriate cleanup option and contaminant reduction level necessary. All activities conducted with Remediation Grant funds must receive Program approval *prior* to implementation.

Remediation Grant disbursements will be made by the Program to the political subdivision for payment to the consultant(s) after the Program receives invoices for work performed consistent with Program-approved activities. Alternately, a political subdivision may request that the Program disburse payments directly to its consultant(s). Specific information about eligible uses of grant funds, ineligible activities and expenses, and grant disbursements is available in the *Grant Disbursement Guidelines for Stipulated Remediation Grants* and can be found at <http://www.in.gov/ifa/brownfields/2366.htm>.

Ineligible Grant Activities

Remediation Grant funding cannot be used for assessment-related costs, demolition expenses, or reimbursement for remediation activities conducted prior to a grant award.³ In addition, costs incurred due to specific requirements of the IDEM Voluntary Remediation Program (i.e., consultant oversight fees, application fees, etc.) or pursuit of historic insurance coverage will not be covered by the Remediation Grant. Specific information about eligible uses of grant funds, ineligible activities and expenses, and grant disbursements is available in the *Grant Disbursement Guidelines for Stipulated Remediation Grants* and can be found at <http://www.in.gov/ifa/brownfields/2366.htm>.

Stipulations

1. Investment (match requirement): Applicants will be required to demonstrate a certain level of investment in their sites within a two-year period following the execution of an Agreement documenting the Applicant’s Remediation Grant award. The required investment will be determined based upon an Applicant’s population and Median Household Income (MHI) from the 2000 census data. Please refer to the following chart to determine an Applicant’s required investment:

³Other funding is available from the Indiana Brownfields Program for assessment, demolition, and petroleum remediation activities. Please visit <http://www.in.gov/ifa/brownfields/2366.htm> for more information.

	Population < 10,000	10,001 to 20,000	20,001 +
MHI < 30,000	\$ -0-	\$.25 per \$1 Grant	\$.50 per \$1 Grant
30,000 to 40,000	\$.25 per \$1 Grant	\$.50 per \$1 Grant	\$.75 per \$1 Grant
40,000+	\$.50 per \$1 Grant	\$.75 per \$1 Grant	\$1.00 per \$1 Grant

The source of the intended investment must be identified in the Applicant's application and may include any eligible investment made after the Applicant's Remediation Grant award has been approved by the Authority Board; no pre-award costs can be counted toward an Applicant's investment match. In-kind services will be considered "investment" for matching funds only if such services are directly related to the Applicant's project and/or work performed at the project site. Permanent jobs created at the redeveloped project site will receive a credit of \$1,000 per job created. Temporary jobs (e.g., construction related) may not be counted. While not limited to the following, other potential investment can include costs associated with remediation, demolition, infrastructure, and construction. Applicants have two years from the date of execution of their Agreement to demonstrate the required investment. Remediation Grants not matched within the two-year period following execution of the Agreement with the Program will become a five-year term loan with an interest rate of three percent to be accrued from the date the Remediation Grant was awarded. Requests for an extension of the investment deadline and an alternative investment credit (e.g., investment in adjacent properties) must be made in writing to the Program at the time of application and will be evaluated on a case-by-case basis. Such requests may affect a project's ranking. Notwithstanding any of the foregoing, the Program reserves the right to determine if the activities the Applicant applies to this investment stipulation satisfy the requirement.

2. Competitive Bidding: Applicants must demonstrate services to be reimbursed with Remediation Grant funding have been competitively bid. Professional services need to be procured in compliance with IC 5-16-11.1, and activities other than professional services are required to be procured in compliance with IC 36-1-12. When seeking payment from its Remediation Grant award, the Applicant will be required to sign a Disbursement Request Form. By signing a Disbursement Request Form, the Applicant will be affirming that the invoiced services submitted for payment were bid pursuant to Indiana law. Program Project Managers may assist in developing bid specifications for work to be performed with Remediation Grant funds. A competitive bidding fact sheet is available at <http://www.in.gov/ifa/brownfields/2366.htm>.

Application Procedure

Using the Program's online application system available on the Program's web site at <http://www.in.gov/ifa/brownfields/2366.htm>, Applicants must submit one fully-completed and digitally-verified online application to the Program by 5:00 pm on the application deadline. There is no application fee. If the application deadline falls on a day on which the Program offices are closed for business, applications will be due and accepted on the next business day.

The supplemental information listed below must also be submitted to the Program by 5:00 pm on the application deadline as an electronic file on CD-Rom or in hard copy (not preferred) at the Program office at 100 N. Senate Avenue, Indiana Government Center North, Room 1275, Indianapolis. Applications or supplemental information not received by 5:00 pm on the application deadline will be considered late and

will not be reviewed unless the Applicant can demonstrate that the information was late due to Program mishandling.

1. Documentation evidencing the Applicant meets the definition of political subdivision as defined by IC 13-11-2-164(c); and
2. Written consent for site access from the current owner of the brownfield (if not owned by the Applicant); and
3. A completed Attachment A; and
4. Phase I Environmental Site Assessment (ASTM E1527-05) and all other reports and maps illustrating previous environmental assessment/remediation activities; and
5. Acknowledgment/confirmation from IDEM OAQ of its receipt of the required Notification Form for asbestos abatement activities, if the Applicant desires to use Remediation Grant funding to conduct asbestos abatement activities (*see Eligibility Criteria on page 4*); and
6. Sufficient detail of how costs will be allocated and the specific work to be performed in the format outlined by the Program in the *Grant Disbursement Guidelines for Stipulated Assessment Grants* found at <http://www.in.gov/ifa/brownfields/2366.htm>; and
7. Documentation demonstrating competitive bidding was undertaken for the services to be reimbursed with grant funds; and
8. A copy of the Applicant's most recent audit from the State Board of Accounts; and
9. Other submittals as indicated in the application or as available and appropriate (e.g., letter of intent to redevelop).

Applications will be evaluated and ranked based upon the criteria set forth below. Remediation Grants will be awarded to the highest ranking eligible applications, and priority for funding will be given to sites that are fully-characterized. An Applicant's past performance on projects that have received brownfields grant and loan assistance will be considered during the review process.

Ranking Criteria

Applicants will be competitively evaluated in one of two categories depending on the size of the community in which the brownfield is located. Assessment Grant dollars will be allocated to categories based on the number of potential applicants in each category and the ranking of projects.

Category One:	Cities, Towns and Counties with populations of 10,000 or more:	50%
Category Two:	Cities, Towns and Counties with populations of less than 10,000:	50%

Projects will be scored based on the following criteria and a total of 275 possible points:

1. **PROJECT BENEFITS** (200 total possible points)
The Program seeks to provide assistance for projects that will have the greatest potential impact on the targeted community, broadly defined as improvement of the environment and/or public health, economic development (e.g., jobs created), increased access to recreation, and sustainable redevelopment.

Economic Development Potential for Site (60 possible points)

The Program seeks to provide assistance for projects that will promote economic development.

The Application clearly addresses:

- long-term plans for reuse of the property, including the fit of the project in the overall economic development plans of the community (up to 30 points)
- the impact the project will have on overall economic development plans/goals of the community, including a potential increase to the property and/or sales tax base, job creation or business expansion, new business or business relocation, and investment in project property (up to 30 points)

Community Development/Greenspace (non-economic benefit) (50 possible points)

The Program seeks to provide assistance for projects that will result in the creation of, preservation of, or addition to a park, greenway, recreational facility, or other municipal benefit/nonprofit use.

The Application clearly addresses:

- long-term plans for reuse of the property for an above-listed (or similar) use, including identifying potential users, and plans for maintenance and preservation (up to 25 points)
- impact the project will have on, and its fit into, the community's Comprehensive Plan (or similar community-approved (re)development or revitalization plan), if one exists (up to 25 points)

Feasibility of Project Success/Resources Leveraged (40 possible points)

The Program will rank higher those applications that demonstrate a greater likelihood of success, broadly defined as having available the financial and other resources necessary to complete the environmental work and site reuse or redevelopment. The Application should demonstrate 1) an approach to the project that is well-conceived, 2) sufficient resources (financial and human) are available to complete the project, and, 3) the capability to timely complete the project. The Application clearly addresses:

- other public and/or private funding or resources to complete the grant activities if grant will not cover the estimated cost (10 points)
- public and/or private funding or resources to complete the reuse and/or redevelopment project (10 points)
- the potential for project success as evidenced by formal contracts/(re)development agreements (10 points)
- previous local efforts to redevelop property and/or address environmental issues of the site (5 points)
- marketability of the site, if applicable (5 points)

Sustainability/Environmental Benefit/Infrastructure Reuse (35 possible points)

The Program seeks to provide assistance for projects that anticipate and plan for environmental benefits beyond the assessment and/or remediation of on-site contamination as demonstrated by the reuse of existing buildings, connection of the site to existing modes of transportation, new construction of LEED-certified buildings, use of renewable energy sources, etc. The project for which the Application is written:

- is linked to a sustainable initiative sponsored by a local unit of government (e.g., transportation oriented development (TOD), Smart Growth Zone, Leadership in Energy Environmental Design (LEED)-Neighborhood Designation (ND). At the time of Application, Applicant must provide documentation from local planning organization or other appropriate entity (e.g., for LEED, the U.S. Green Building Council) that the project is participating in the TOD, Smart Growth Zone, LEED-ND or other sustainable development initiative (5 points)
- is seeking certification under LEED, the National Association of Home Builders National Green Building Program (NAHBGreen), or other nationally recognized green building program for newly-constructed buildings on the Site. At the time of Application, Applicant must provide documentation of acceptance from the entity managing acceptance into such programs (5 points)
- is participating in an established local unit of government sustainable development (SD) initiative or program. At the time of Application, Applicant must provide documentation of acceptance from the appropriate local entity managing acceptance into such program (5 points)
- has a completed energy audit for on-site building(s) planned for reuse and a plan, including budget and available funding sources, to implement the recommendations of the energy audit. At the time of Application, Applicant must provide a copy of the energy audit and implementation plan (5 points)
- incorporates green remediation techniques, through consideration of all environmental effects of undertaking grant activities, including incorporating sustainable practices. Bids and specifications for the project include the following:
 - a. Requirement for the use of renewable fuels for on-site vehicles and equipment and/or efforts to reduce emissions released by the burning of diesel fuels through modifications to operations (e.g., reduced idle times of machinery)
 - b. Requirement for deconstruction⁴ of on-site structures
 - c. Requirement for use of remediation techniques that promote ecosystem recovery
 - d. Requirement to reuse construction and demolition debris as fill material when permissible
 - e. Requirement to use green infrastructure⁵ for stormwater management during demolition, deconstruction, assessment/remediation activities and redevelopment (5 points)

⁴ Deconstruction is defined as the disassembly of buildings so as to safely and efficiently maximize the reuse and recycling of their materials. (“*OSWER Innovations Pilot Deconstruction and Building with Reused Materials Training*”, Solid Waste and Emergency Response, U.S. Environmental Protection Agency, May 2005)

- is requiring green infrastructure as a part of site reuse/redevelopment to support water conservation and improve water quality through use of Low Impact Development (LID) techniques, Storm Water Retention, use of high water efficiency water fixtures/toilets in new construction, etc... (5 points)
- will become part of the local public transportation authority mass transit system, e.g., inter-modal hub, transit stop, etc. At the time of Application, Applicant must provide documentation that the planned site redevelopment is part of the local transportation plan (5 points)

Welfare and Public Health (15 possible points)

The Program seeks to provide assistance for projects that will improve public health and welfare. The Application clearly addresses:

- the environmental and/or public health benefits anticipated from the remediation and/or redevelopment of the Site, including benefit for any sensitive populations particularly negatively affected by current site conditions (up to 10 points)
- specific examples of human health risks that will be mitigated by grant activities and/or environmental improvements that can reasonably be expected to result from grant activities (up to 5 points)

2. COMMUNITY ENGAGEMENT & LOCAL SUPPORT FOR PROJECT (50 total possible points)

The Program seeks to provide assistance for projects/Applicants that a) demonstrate active efforts by the Applicant to engage the community in brownfields redevelopment in general, as well as specifically in the project that is the subject of the application, and b) have identified and reached out to the local partners necessary for the project to succeed.

Project-Specific Neighborhood Comment and Input (30 possible points)

- Project-specific plans announced at a public meeting and comments sought from the public (10 points)
- Substantial community engagement demonstrated (through additional (or more focused) opportunity for community and/or neighborhood input, for example, into development of the reuse or redevelopment plan for the brownfield) (10 points)
- Favorable responses received and/or documented follow up to any negative comments received (5 points)
- Identified and established relationships with project partners (5 points)

⁵ Green Infrastructure includes bio-swales, rain gardens, pervious pavement, or other approved, engineered on-site stormwater management unit.

Coordinated Local Brownfields Efforts (20 possible points)

- Local coalition/organization meeting working regularly on brownfields issues and/or brownfields coordinator designated for the local community (5 points)
- Local brownfields sites identified and/or prioritized (5 points)
- Firm plans to form brownfields workgroup or coalition to address brownfields issues locally (5 points)
- No brownfields workgroup or coalition exists to address brownfields issues locally, but a joint local effort by more than one party to apply for grant (5 points)

3. OBJECTIVE CRITERIA (25 total possible points)

Geographic Distribution of Grant Money (20 possible points)

- This is the only project this political subdivision is applying for in this round (5 points)
- This is the only project seeking funding from this county in this round (5 points)
- This is the only project from a two or more county area seeking funding in this round (5 points)
- This applicant has not received grant funding in any prior round (5 points)

CLEAN Community Designation (5 points)

The Program encourages communities to participate in the Indiana Comprehensive Local Environmental Action Network (“CLEAN”) Community Challenge, a voluntary recognition program for Indiana local governments that helps communities take steps to plan, develop, and implement a quality of life plan. An Applicant that is a CLEAN Community or a site that is located in a CLEAN Community will receive additional points. Information about the CLEAN Community Challenge can be found at <http://www.in.gov/idem/4422.htm>.

Priority (“just in time”) Funding

Remediation Grants may also be made available outside the normal grant round to fund approved assessment activities that would fulfill immediate economic development project needs (if funds remain from the \$3,000,000 available in the fiscal year). A dollar-for-dollar match of such a Remediation Grant must be provided by the Applicant (or a stakeholder involved in the project, on behalf of the Applicant) and the Applicant must submit a certification that a company or developer is imminently interested in

redeveloping the site.⁶ The same online application form and application requirements apply to a Priority Funding request. Please contact the Indiana Brownfields Program Financial Resources Coordinator at (317) 234-1688 prior to submitting your Priority Funding application to discuss your project.

Further Information

We welcome comments on the Program's Remediation Grants at any time. Questions regarding these guidelines or the Remediation Grants can be directed to the Program's Financial Resources Coordinator by phone at (317) 234-1688. These guidelines may be modified at any time by the Indiana Finance Authority Board to address demand and other issues to promote the effective and efficient administration of the Indiana Brownfields Program.

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⁶ The required certification should include details on relevant project considerations such as the timeline for redevelopment, intended future use of the site, proposed investment, and funding source for the dollar-for-dollar match. The Program may seek clarification of project plans and/or contact the end user/developer of the Site if additional information is necessary to determine the imminent nature of the redevelopment project.

Attachment A

Property Ownership Eligibility Questions

Indiana Brownfields Program (“Program”) funding may not be used to pay for response costs at a brownfield site for which the applicant (eligible political subdivision per IC 13-11-2-164(c)) or any other entity involved in the project (collectively, the “Applicant”) is potentially liable under CERCLA § 107 or IC 13-25-4.¹ The following questions are intended to help the Program ensure that the Applicant is not liable under CERCLA for response costs at the site designated in its application. Please answer the following questions fully and in the order they appear. (Note: based on the responses, the Program may need to obtain additional information in order to make this determination).

1. Affirm that the Applicant is not potentially liable for contamination at the site under CERCLA § 107 (*e.g.*, as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) and explain why.²
2. Enforcement Actions. Identify known ongoing or anticipated state or federal environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the Applicant is aware of regarding the responsibility of any party (including the Applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and the Program may conduct an independent review of information related to the Applicant’s responsibility for the contamination or hazardous waste at the site.
3. Information on Liability and Defenses/Protections.
 - a. Information on the Property Acquisition. To save space, the information in subsections i-v below may be combined into one response, though please be sure to fully answer each question. Describe:
 - i) How the Applicant acquired or will acquire ownership (*e.g.*, by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
 - ii) The date the Applicant acquired or will acquire the property;
 - iii) The nature of the Applicant’s ownership (fee simple or other), if applicable;
 - iv) The name and identity of the party from whom the Applicant acquired ownership (*i.e.*, the transferor), if applicable;
 - v) All familial, contractual, corporate or financial relationships or affiliations the Applicant has or had with all prior owners or operators (or other potentially responsible parties) of

¹ An exception is made for Remediation Grant applicants that would otherwise satisfy the exemption from CERCLA liability as a bona fide prospective purchaser (BFPP), but for the date of site acquisition. Please see the Remediation Grant guidelines for additional information and complete these eligibility questions as the guidelines require the Applicant to satisfy all other criteria to qualify as a BFPP in order to be eligible for funding under this exception.

² Because current owners of sites are potentially liable under CERCLA, Applicants who own the site (or plan to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107(r)), the innocent landowner defense (CERCLA § 107(b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D); IC 13-25-4-8(e)).

the property (including the person or entity from which the Applicant acquired the property).

- b. Timing of Hazardous Substance Disposal. Identify whether all disposal of hazardous substances at the site occurred before the Applicant acquired (or will acquire) the property and whether the Applicant caused or contributed to any release of hazardous substances at the site. Affirm that the Applicant has not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by the Applicant or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in the description:
 - i) the types of site assessments performed (*e.g.*, ASTM Phase I or equivalent), the dates of each assessment,³ and the entity for which they were performed (state whether the assessment was performed specifically for the Applicant, or if not, the name of the party that had the assessment performed and that party's relationship to the Applicant); and
 - ii) who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since the Applicant acquired ownership (or the uses that the Applicant anticipates once it acquires the property) through the present, including any uses by persons or entities other than the Applicant. Please provide a timeline with the names of all current and prior users during the time of the Applicant's ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (*e.g.*, lease, license, trespass); and the Applicant's relationship to the current and prior users.
- e. Continuing Obligations.⁴ Describe *in detail* the specific appropriate care that the Applicant exercised (or if the property is yet to be acquired, that the Applicant will exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking reasonable steps⁵ to:
 - i) stop any continuing releases;
 - ii) prevent any threatened future release;
 - iii) prevent or limit exposure to any previously released hazardous substance.

³ Please note that if the Applicant's Phase I assessment was conducted more than 180 days prior to the date it plans to purchase the property, the Applicant will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that the Applicant has or will conduct the appropriate updates within 180 days of purchase.

⁴ Owners of contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, owners must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices.

⁵ Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substances may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site. Program technical staff are available to discuss reasonable steps for a site should an Applicant require assistance to determine the reasonable steps required at the brownfield.

Please confirm your commitment to:

- i) comply with all land use restrictions and institutional controls;
- ii) assist and cooperate with those performing the cleanup and to provide access to the property;
- iii) comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- iv) provide all legally required notices.